

901:10-6-04 Public meetings.

(A) Not later than thirty days after public notice or a draft permit, draft permit modification, or a proposed action to deny, suspend, or revoke a permit, any person may file a request for a public meeting. This paragraph does not apply to amended draft actions or to a NPDES permit application where an antidegradation review is required.

(B) Public meetings and antidegradation review and NPDES permits.

(1) Within ninety days of receipt of the application for any permit to install with a NPDES permit, the director shall hold a public meeting where an antidegradation review is required for any category three wetland, a designated outstanding national resource water, outstanding high quality water, state resource water or superior high quality water. The public meeting shall be for the purpose of evaluating issues related to lower water quality.

(2) Within ninety days of receipt of the application, the director shall hold a public meeting for any permit to install application and any NPDES permit application where the application indicates that an antidegradation review is required for general high quality waters other than category three wetlands and for limited quality waters, and the director also determines that there is significant public interest. This meeting is held concurrently with the meeting for the draft permit.

(C) If the director determines that there is significant public interest as described in paragraph (D) of this rule in a draft permit to install, permit to operate, NPDES permit, or modification of any permit, in the antidegradation review described in paragraph (B)(2) of this rule, or in any proposed action to deny, suspend, or revoke a permit, or where required to do so by statute or rule, the director shall hold one public meeting in the county where the facility is located or in a contiguous county. In consideration of an application for issuance of a permit, the director may hold one public meeting prior to issuance of a permit. When allowed by the antidegradation policy, the director shall hold the public meeting on antidegradation issues concurrently with any public meeting held for the draft permit.

BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION

STATE OF OHIO

LARRY ASKINS, ET AL.,	:	Case No. ERAC 876032-876034
	:	
Appellants,	:	
	:	
v.	:	
	:	
ROBERT J. BOGGS, DIRECTOR OF OHIO	:	
DEPARTMENT OF AGRICULTURE, ET AL.,	:	
	:	
Appellees.	:	

DECISION

Rendered on April 15, 2010

Leatherman & Witzler, Paul A. Skaff, Esq., for Appellants

Richard Cordray, Attorney General, Jessica Atleson, Esq. and Aaron Farmer, Esq., for Appellee Director of Ohio Department Of Agriculture

Van Kley & Walker, LLC, Jack A. Van Kley, Esq. and Christopher A. Walker, Esq., for Appellee (b)(6) Dairy

RULING ON DISPOSITIVE MOTIONS.

SHILLING, COMMISSIONER

This matter comes before the Environmental Review Appeals Commission ("ERAC," "Commission") upon various dispositive motions filed by the individual parties to the instant matter. On May 23, 2008, the parties filed the following:

{121} In examining the facts before it, the Commission finds no genuine issues of material fact in dispute that would preclude resolution of this matter through summary disposition. The Commission will now apply the relevant statutes, regulations, and case law to the undisputed facts presented herein.

{122} The Commission will first examine (b)(6) assertion that Askins' claims regarding the original MMP, Assignments of Error Nos. 3, 4, 5, and 11, must fail because the original MMP was no longer in effect once the Director issued the Amended MMPs.

{123} In pertinent part, Ohio Revised Code ("R.C"). 3745.04 states:

(B) * * * the director has and retains jurisdiction to modify, amend, revise, renew, or revoke any permit, rule, order, or other action that has been appealed to the commission. * * * Not later than thirty days after the issuance of the modification, amendment, revision, renewal, or revocation, the director shall file with the commission and serve on each party to the existing appeal a statement notifying the commission and the party that the appealed action was revoked or describing how the appealed action was modified, amended, revised, or changed as part of a renewal, as applicable. *A party to the existing appeal is deemed to have appealed such a modification, amendment, revision, renewal, or revocation upon filing with the commission and serving on all parties an objection to the modification, amendment, revision, renewal, or revocation.* The objection shall be filed with the commission not later than thirty days after the director files the statement with the commission regarding the modification, amendment, revision, renewal, or revocation. The objection shall state any new grounds of appeal resulting from the modification, amendment, revision, renewal, or revocation. The commission shall not charge a fee for the filing of such an objection. (Emphasis added.)

{124} It is undisputed that the Director properly amended the MMP by filing a Notice of Amendment on two separate occasions; the most recent amendment occurred on June 27, 2008. Further, the case file contains no objection by any

3745.04 Appeals to review commission.

(A) As used in this section, "any person" means any individual, any partnership, corporation, association, or other legal entity, or any political subdivision, instrumentality, or agency of a state, whether or not the individual or legal entity is an applicant for or holder of a license, permit, or variance from the environmental protection agency, and includes any department, agency, or instrumentality of the federal government that is an applicant for or holder of a license, permit, or variance from the environmental protection agency.

As used in this section, "action" or "act" includes the adoption, modification, or repeal of a rule or standard, the issuance, modification, or revocation of any lawful order other than an emergency order, and the issuance, denial, modification, or revocation of a license, permit, lease, variance, or certificate, or the approval or disapproval of plans and specifications pursuant to law or rules adopted thereunder.

(B) Any person who was a party to a proceeding before the director of environmental protection may participate in an appeal to the environmental review appeals commission for an order vacating or modifying the action of the director or a local board of health, or ordering the director or board of health to perform an act. The environmental review appeals commission has exclusive original jurisdiction over any matter that may, under this section, be brought before it. However, the director has and retains jurisdiction to modify, amend, revise, renew, or revoke any permit, rule, order, or other action that has been appealed to the commission. The modification, amendment, revision, renewal, or revocation is subject to applicable public participation and public notice requirements and is subject to an appeal under this section or section 3745.07 of the Revised Code, as applicable. Not later than thirty days after the issuance of the modification, amendment, revision, renewal, or revocation, the director shall file with the commission and serve on each party to the existing appeal a statement notifying the commission and the party that the appealed action was revoked or describing how the appealed action was modified, amended, revised, or changed as part of a renewal, as applicable. A party to the existing appeal is deemed to have appealed such a modification, amendment, revision, renewal, or revocation upon filing with the commission and serving on all parties an objection to the modification, amendment, revision, renewal, or revocation. The objection shall be filed with the commission not later than thirty days after the director files the statement with the commission regarding the modification, amendment, revision, renewal, or revocation. The objection shall state any new grounds of appeal resulting from the modification, amendment, revision, renewal, or revocation. The commission shall not charge a fee for the filing of such an objection.

Vickie A. Askins
(b)(6)
Cygnet, Ohio 43413

June 17, 2009

Mr. Robert J. Boggs, Director
The Ohio Department of Agriculture
8995 East Main Street
Reynoldsburg, Ohio 43068

RE: Modified (b)(6) Dairy Permit

Dear Director Boggs,

The main purpose of this letter is to request your investigation of some serious issues in connection with the Livestock Environmental Permitting Program (LEPP) and the recently-approved modified permit for the (b)(6) Dairy in Wood County. I believe there was a lack of accountability by your staff at the open house/public meeting. I am also very concerned that the Responsiveness Summary did not respond to many of the significant comments raised during the public comment period. As you know, I'm involved in the on-going appeal of the (b)(6) (nka (b)(6) Jersey) Dairy permit but this letter pertains to the (b)(6) Dairy. Also, I'll apologize up front for the length of this letter but I have many, serious concerns that, I believe, require your attention.

The Public Notice stated that the "open house will begin at 6:00 p.m. followed by the public meeting from 7:00 to 8:30 p.m. on Dec. 11 in the Elmwood Local School Auditoria". As I understand the concept of the open house, this hour was provided so that citizens could ask questions of the LEPP staff including the ODA Engineer, Gary Zwolinski. Along with several other concerned citizens including an SWCD representative, (b)(6) and I took advantage of this opportunity to ask Gary about the modifications to the permit, since the Dairy's engineer did not attend this meeting. As we were questioning Gary about how this modification and the addition of a fourth manure pond would provide "treatment", Kevin Elder approached our group and said the public meeting was going to get started. Sadly, Gary never did answer our questions. Plus, as we sat down for the meeting, I noticed that it was only 6:35 p.m. and also that the owner/operator of the (b)(6) Dairy had not yet arrived.

At this point, Kelly Harvey began the meeting and read the Public Notice. She announced that public comments would be limited to five minutes – even though she knew that only eight citizens had signed up to present oral comments and also that there was supposedly still two hours remaining according to the Public Notice. I was the last presenter and Kelly stood up as my presentation approached five minutes to indicate my time was up. I had submitted nine pages of questions and concerns to Kelly before I began my oral testimony which I would have shared with the other attendees - since the LEPP staff didn't have anything to present.

Kelly closed the meeting at 7:15 p.m. The LEPP staff left soon thereafter even though (b)(6) (b)(6) was trying to question Gary about some of the questionable soil tests. I've attached my e-mail stream with Kelly after the meeting asking about these breaches in protocol. After I determined this was pointless, I submitted eight comments to Kelly before the deadline. Not surprisingly, none of these questions were addressed in the Responsiveness Summary.

The *Sentinel-Tribune* carried the public notice stating that you had approved the modified permit on May 30th. Kelly sent an e-mail on June 2nd which included the Interested Party letter as well as the legal notice, but instead of attaching the Responsiveness Summary, she referred citizens to the LEPP website. I searched the website for this document but the only Responsiveness Summary available was the original one. I called Kelly and asked her where I could access this document since I had not yet received a copy in the mail. She told me that the ODA was experiencing computer problems so this document hadn't yet been posted. She e-mailed me Friday morning and stated "in my rush I didn't look in the right place. The responsiveness summary is on the web and has been since yesterday, it could be found on the permitted farm list."

I asked Kelly how she expected citizens to find documents on the LEPP website when she couldn't find them. I also asked why citizens were being penalized since the 30-day appeal clock was already ticking, even though the public responses were not available. Kelly very adamantly told me that the appeal end date would NOT be changed.

Although Kelly's transmittal letter accompanying our hard-copy of the Responsiveness Summary was dated June 2nd, the envelope was not postmarked until June 4th and we didn't receive it until Friday afternoon, June 5th. The LEPP staff had the public notice ready for publication on May 29th, why didn't they have the public responses ready for distribution at the same time? All of this is probably pointless. We have already learned the hard way that the appeals process is also completely one-sided: ODA attorneys + AG attorneys + Dairy's attorney vs. citizens. If that doesn't work, you just change the regulations. Where is the justice for citizens in this process?

After reading thru the Responsiveness Summary, I noticed that many responses were vague and evasive. I was very disappointed that most of my questions had not even been addressed. I assume they were categorized as either subjects not under your control or not about this modified permit. Let me assure you, Director Boggs, my comments were clearly about this modified permit and in particular, how this modification would treat the manure and reduce the phosphorus. The response on page 7 attempts to gloss over these topics, but there is absolutely no explanation as to how pond 3 "will act as a digester performing biological treatment". Several citizens requested "scientific studies" to substantiate these claims including W. Robert Midden, PhD, but there was no response other than the questionable statement above. Can anyone at the ODA explain how an earthen pond will act as a digester? Also, please explain the response about the "new dairy ration recommendations". This is the first time this has come up.

Larry and I submitted many comments about the questionable soil testing data in this modified permit. For example, we asked for an explanation of how the P levels for four fields in the modified permit had "decreased significantly from the original MMP." The response was that "The ODA has no reason to believe that the facility or its engineering firm are trying to mislead

the department." I believe this answer is completely disingenuous after all the communications we and others have had with ODA personnel about this situation, some of which include:

- 3/19/08 - I testified at the Lake Erie Commission meeting and spoke to you afterwards about the altered soil testing data in the original (b)(6) Dairy MMP,
- 4/16/08 - Wood County Commissioners letter to you asking for an investigation in part because of altered soil testing data in two Wood County permits,
- 4/16/08 - Letter from Kelly Harvey in response to my 4/4 public records request - "ODA does not have copies of any lab reports for the soil test results",
- 5/12/08 - Your reply to the Commissioners - "purported discrepancy is explained by converting the phosphorus results",
- 7/14/08 - I presented testimony before you, Kevin Elder and First Lady Frances Strickland "We've found 'altered' soil test data in these permits",
- Sept. 2008 - Senator Mark Wagoner and Representative Randy Gardner met with you to discuss the altered data in the Wood County permits,
- 10/18/08 - I presented testimony before the US EPA (and Kevin Elder) stating that we have found "what appears to be fraudulently manipulated data" in these permits,
- 10/27/08 - Dr. Robert Midden and Brad Espen - Wood County Health Department, letter to you "the accuracy and validity of that data [soil tests] has been questioned",
- 11/10/08 - My testimony at the ODA public hearing in Reynoldsburg on rule changes - "We found that someone had 'altered' this soil lab test phosphorus data",
- 11/13/08 - Senator Mark Wagoner met with you a second time about altered data in Wood County approved permits but you refused to investigate,
- 12/11/08 - I presented oral and written comments at the ODA public meeting for the modified (b)(6) Dairy permit - "why did ODA allow the [soil testing] data to be used as P in one permit and as P205 in the other",
- 12/30/08 - Roger Wise and Joe Logan met with Assistant ODA Director Doug O'Brien and Adam Ward about the altered data and OAC regulations,
- 1/9/09 - ODA personnel, including Andy Ety, met in Bowling Green with Dr. Robert Midden and Brad Espen to discuss their request for the questionable soil testing data,
- 2/10/09 - Roger Wise met a second time with Assistant ODA Director Doug O'Brien and Adam Ward about the altered data,
- 3/3/09 - Meeting at (b)(6) Dairy with First Lady Frances Strickland, Kevin Elder, Dr. Midden and others - Elder still refused to get soil laboratory reports.
- 3/30/09 - My letter to Kevin Elder (to which he has still not replied)- We have proof that the Dairy developer and/or the Dairy engineer have altered the soil testing data in another ODA-approved permit,
- 3/31/09 - I questioned Kevin Elder and Adam Ward at the OEC Lobby Day about the altered data in the original (b)(6) Dairy permit but they refused to answer.

Obviously, the ODA has many reasons to believe the dairy's engineer misled your department. You and your staff had the perfect opportunity to request the actual soil laboratory reports from the engineer when the (b)(6) Dairy submitted their request for a modification, but you chose not to. How can you justify this choice?

I feel that I must add one more troubling situation for you to investigate. I testified last evening at the ODA Pheasant Run public meeting in Defiance. Kelly arbitrarily limited speakers to three

minutes even though she knew only ten people had signed up to speak. After Kelly closed this 32-minute meeting, she interrupted my conversation with Sherry Fleming to confront me about my remarks. She made accusations that I had violated the law! She alleged that my remarks were not about the Permit and further threatened that if I did it again; she would stop me and would not allow me to speak at future public meetings. I was completely taken aback by her behavior.

I've attached my remarks that caused Kelly's tirade for your review. As you can see, they WERE about the Pheasant Run permit. I added remarks about the troubling history of this Program and staff so the meeting attendees would understand why I'm so concerned. I believe everything I said was absolutely true. Sherry commented that Kelly singled me out after this meeting with her accusations. Other than Todd Snyder (with whom Larry and I had shared our specific questions about this Permit) other presenters spoke about the physical appearance of other facilities, the destruction of rural roads, the ODA's poor enforcement record, concerns about smells, property values, and water use. Kelly didn't confront anyone else even though they obviously didn't comply with her narrow rules for comments.

Director Boggs, I appreciate that the ODA has to do more with less. The ODA held three public meetings in 2004 for the (b)(6) Dairy permit and answered almost all of our questions; whereas, they held one arbitrarily-shortened meeting and did not answer most of our questions for the modified (b)(6) Dairy permit. As David Miller, the editor of our local newspaper, stated so aptly several years ago when your predecessor tried to claim that manure application fields were a trade secret – "why have such public meetings at all? Are they just for show, so the state agency can check off what's required to be done in the process?" I urge you to investigate these serious issues and restore some accountability and integrity to this one-sided process.

Respectfully,

Vickie A. Askins

Attachments

cc: First Lady Frances Strickland
Senator Mark Wagoner
Representative Randy Gardner
Jim Carter, Wood County Commissioner
Dr. Robert Midden
Brad Espen
Roger Wise
Joe Logan
Jim Rickenberg
David Miller
Sherry Fleming

Vickie A. Askins

(b)(6)

Cygnets, Ohio 43413

(b)(6)

April 4, 2011

Mr. Jim Zehringer, Director
The Ohio Department of Agriculture
8995 East Main Street
Reynoldsburg, Ohio 43068

Dear Director Zehringer,

Congratulations on your appointment as the new Director of the Ohio Department of Agriculture (ODA). I'm sure the last few months have been very busy as you've acclimated to your new position. As a former legislator, you may already be aware that your predecessors were criticized by environmental groups and concerned citizens for their handling of the Livestock Environmental Permitting Program (LEPP). As one of those critics, I'm writing in the hope you will open a dialogue between the ODA and citizens in order to promote public participation and restore integrity to this process.

(b)(6) and I have studied the LEPP and have reviewed many approved permits. During our reviews, we found irregularities that were very troubling. We shared our concerns with Senator Mark Wagoner and Representative Randy Gardner and they met with Director Boggs - but he refused to acknowledge these serious issues. We also shared our data with many others including Joe Logan, OEC Director of Agricultural Programs, and Roger Wise, president of the Ohio Farmers' Union. Mr. Logan and Mr. Wise met with Doug O'Brien while he served as the Assistant ODA Director. Unfortunately, Mr. O'Brien was unable to address these concerns before he left to serve with the Obama campaign.

Attached are copies of information I submitted to Senator Kirk Schuring from my testimony at the Senate hearings for HB 363. Senator Schuring forwarded my first set of questions to the ODA for response. However, the answers provided by Mike Eckhardt failed to adequately address the issues raised in my questions. Consequently, I submitted the attached list of follow-up questions. To my knowledge, Mr. Eckhardt never replied to these additional questions.

In addition, attached are copies of unanswered letters I sent to former Director Boggs and Kevin Elder. When I inquired why the ODA had not responded, Mr.

Eckhardt informed me that their legal staff had advised them not to answer any of my letters because I was involved in a legal appeal of one of the LEPP permits. This appeal was concluded a year ago but I have yet to receive a reply.

I'm sure you agree that an open, effective relationship between legislators, the ODA and citizens is critical to ensure public trust and to promote collaboration. Please ask your staff to respond to the follow-up questions.

Respectfully,

Vickie A. Askins

Attachments

cc: Joe Logan
Roger Wise
Senator Mark Wagoner
Rep. Randy Gardner

ORGAN STOCK LLP
1335 DUBLIN RD., SUITE 104D
COLUMBUS, OHIO 43215
614.481.0900

Contact: Shawn J. Organ
 Tel.: 614.481.0900
 Email: sjorgan@organstocklaw.com

FOR IMMEDIATE RELEASE

ORGAN STOCK LLP – LITIGATION FIRM FILES LAWSUIT

PAMELA D. WILLIAMS AND NORTHWEST NEIGHBORHOOD ALLIANCE FILE FEDERAL LAWSUIT AGAINST (b)(6) FARMS AND THE OHIO DEPARTMENT OF AGRICULTURE FOR VIOLATIONS OF THEIR CONSTITUTIONAL RIGHT TO PETITION THEIR GOVERNMENT AND CONSPIRACY TO VIOLATE THEIR CONSTITUTIONAL RIGHTS.

On May 3, 2010, Pamela D. Williams and the Northwest Neighborhood Alliance filed a federal lawsuit in the United States District Court for the Southern District of Ohio against (b)(6) Farms, LLC; Daybreak Foods, Inc.; and Christopher Rodabaugh, an Ohio Department of Agriculture Inspector. (*Pamela D. Williams, et al. v. (b)(6) Farms, LLC, et al.*; Case No. 2:10-cv-00394; Judge George C. Smith).

Williams and NNA's six count Complaint was filed in direct response to a prior lawsuit filed by (b)(6) against Ms. Williams and NNA in November 2008, as well as other actions taken by (b)(6) and the defendants to infringe upon Williams and NNA's constitutional rights.

Williams and NNA's Complaint states that "Plaintiffs bring this action to secure redress after having been the victims of a SLAPP suit (the 'SLAPP Suit')—a classic Strategic Litigation Against Public Participation—filed by (b)(6) and conspired to by all Defendants. The SLAPP Suit was factually baseless, legally reckless, and ultimately dismissed at the first instance by th[e] federal court. But, the dismissal did not come until after the SLAPP Suit served its true purpose of silencing (b)(6) and Daybreak's critics—specifically, Williams and NNA."

The Complaint further provides that "[d]uring the pendency of the SLAPP Suit and even thereafter both Williams and NNA were silenced by a gripping fear—a fear that by merely voicing their opinion against Defendants' egg operations or regarding the location of over (b)(6) chickens within (b)(6) or by petitioning their government against the addition of more chickens, Williams and NNA would risk [(b)(6)] further using the federal court system to threaten financial ruin."

The Complaint alleges that the "SLAPP Suit sent the loud and clear message to Pam Williams, to NNA and to [others]: 'Don't speak out against chickens; don't complain to the Ohio

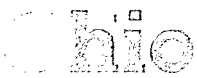
Department of Agriculture about chickens; don't write letters to the editor against chickens; don't post signs against chickens; and stop posting information on your webpage. Rather, sit down and be silent or we will destroy you with costly litigation.'"

As to the Ohio Department of Agriculture, the Complaint alleges that Inspector Christopher Rodabaugh, in his capacity as an ODA employee, conspired with (b)(6) to deprive Pam Williams and NNA of their First Amendment constitutional rights" . . . by "attempting to prohibit Williams and/or NNA's presence" at an ODA meeting that, by law, was to be open to the public. In support of their claim, Williams and NNA attach an email from (b)(6) (b)(6) Supervisor, (b)(6) to ODA Executive Director Kevin Elder, stating, "Chris Rodabaugh said the Hi-Q public meeting date had been set. What date and time is it?" The email further stated, "Chris said the plan was to rent both large rooms and use only one to limit the opposition from posting their propaganda . . . I am personal friends with . . . the owners of the Event Center. I'll bet I can get them to stop even signs being posted outside on their property too."

Representing Pam Williams and the Northwest Neighborhood Alliance are Shawn J. Organ and Jonathan K. Stock of the Organ Stock, LLP litigation firm in Columbus, Ohio. Mr. Organ stated, "It has been a long, difficult road for Pam and others, but we all look forward to the opportunity to place these facts and circumstances before a jury to determine what value we as a society place on our First Amendment rights and how we judge those who attempt to take them from us."

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If you would like additional information about this topic please contact the Organ Stock LLP offices at 614.481.0900 or email the offices at contact@organstocklaw.com.



Department of
Agriculture

Governor John R. Kasich • Lt. Governor Mary Taylor
Director James Zehringer

Administrative
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-466-2732 • Fax: 614-466-6124
www.agri.ohio.gov • administration@agri.ohio.gov

5-7

August 11, 2011

Mr. Jack Firsdon

(b)(6)

Wayne, Ohio 43466

Re: Public records request dated July 29, 2011

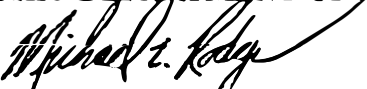
Dear Mr. Firsdon:

Thank you for your inquiry. You have asked that I respond to your request for public records concerning the Livestock Environmental Permitting Program (LEPP). Please note that the Ohio Department of Agriculture (ODA) does not keep operating records for each permitted facility. Rather, ODA requires each facility to maintain these records and to make them available for inspection by ODA. To the extent that records from the (b)(6) facilities' operating records have been provided to ODA, those records will be provided to you. However, records maintained by a permitted facility that have not been transmitted to ODA are not records kept by a public office.

You have also requested a copy of ODA's "Technical Standards for Nutrient Management Plans." These standards are contained within Ohio Administrative Code Chapter 901:10-2 and are enclosed for your reference. Enclosed you will also find a list of current certified livestock managers per your request.

ODA has made every effort to fulfill your request and the documents enclosed are, to the best of our knowledge, all public records relating to the items specified in your July 29, 2011 letter. These documents are being provided pursuant to Ohio's Public Records Act, R.C. 149.43. If you have any questions about the enclosed documents, please call me at (614) 728-6204. Thanks again.

Sincerely,
OHIO DEPARTMENT OF AGRICULTURE


Michael L. Rodgers
Senior Staff Counsel

Enclosures

Cc: Kevin Elder, Livestock Environmental Permitting Program
Bill Hopper, Chief Legal Counsel
Kristina Tonn, Senior Staff Counsel



5-8
Jack Firsdon
(b)(6)
Wayne, Ohio 43466

August 19, 2011

Mr. Michael L. Rodgers
ODA Senior Staff Counsel
8995 East Main Street
Reynoldsburg, Ohio 43068

RE: Livestock Environmental Permitting Program Public Records

Dear Mr. Rodgers,

Thanks for sending me the public records I had requested. I hope you received my check.

I noticed on the Manure Application Records in the Annual Reports you sent me that there was no manure analysis documented on the forms. The only information I found was a 2007 Manure Analysis Report but nothing more recent.

Therefore, would you please send me copies of the following information:

1. Any Manure Application Records for (b)(6) Dairy which show the manure analysis.
2. Copies of 2008, 2009, and 2010 Manure Analysis Reports for the (b)(6) Dairy.
3. Copies of the (b)(6) Dairy manure analysis samples which list the nutrient content given to farmer recipients.
4. Copies of the most current draft of (b)(6) Dairy's Renewal Permit and MMP.

Please send this information to my address as listed above and include an invoice for the copies. I appreciate your help with my requests.

Respectfully,

Jack Firsdon



Department of
Agriculture

Governor John R. Kasich • Lt. Governor Mary Taylor
Director James Zehringer

5-9
Administration
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-466-2732 • Fax: 614-466-6124
www.agri.ohio.gov • administration@agri.ohio.gov

August 24, 2011

Mr. Jack Firsdon

(b)(6)

Wayne, Ohio 43466

Re: Public records request dated August 19, 2011

Dear Mr. Firsdon:

Thank you for your inquiry. You have requested a copy of the 2008, 2009, and 2010 manure analysis reports for (b)(6) Dairy. Enclosed are the corresponding inspection reports which contain manure analysis information as requested in item two. We are also enclosing the 2011 inspection report for this facility. You have also requested a draft copy of the renewal application and manure management plan (MMP) for this dairy. Both of those documents are included in our response. The Ohio Department of Agriculture (ODA) has no records responsive to items one and three of your request, other than those supplied with ODA's August 11, 2011 response.

ODA has made every effort to fulfill your request and the documents enclosed are, to the best of our knowledge, all public records relating to the items specified in your August 19, 2011 letter. These documents are being provided pursuant to Ohio's Public Records Act, R.C. 149.43. If you have any questions about the enclosed documents, please call me at (614) 728-6204. Thanks again.

Sincerely,

OHIO DEPARTMENT OF AGRICULTURE

Michael L. Rodgers
Senior Staff Counsel

Enclosures

Cc: Kevin Elder, Livestock Environmental Permitting Program
Bill Hopper, Chief Legal Counsel
Kristina Tonn, Senior Staff Counsel



EASTMAN & SMITH LTD.

ATTORNEYS AT LAW

Established 1844

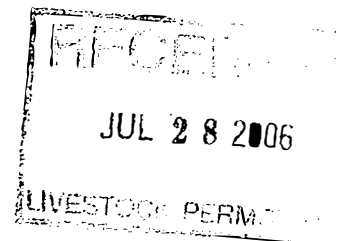
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Jeffery A. Culver
Attorney at Law
Direct Dial: 419-247-1715
jaculver@eastmansmith.com
Also admitted in Michigan

One SeaGate, 24th Floor
P.O. Box 1003
Toledo, Ohio 43699-0003
Telephone: 419-241-6000
Facsimile: 419-247-1777

July 27, 2006

Kevin Elder, Executive Director
Ohio Department of Agricultural
Livestock Environmental Permitting Program
8995 East Main Street
Reynoldsburg, Ohio 43068



Re: **Wood County Citizens Opposed to Factory Farms**
Objections to (b)(6) Dairy, LLC Draft Permit to Install
No. NAO-0001.PI001.WOOD and Draft Permit to Operate
No. NAO-0001.PO001.WOOD
Our File No: W1228/178671

Dear Mr. Elder:

On behalf of Wood County Citizens Opposed to Factory Farms ("Wood County Citizens"), the law firm of Eastman & Smith Ltd. submits the following objection to the Ohio Department of Agriculture's ("ODA") decision to terminate the public comment period concerning the Draft Permit to Install and Draft Permit to Operate referenced above. ODA has proposed a cutoff date of July 28, 2006. Wood County Citizens object to this cutoff date and respectfully request that ODA extend the comment period at least thirty days beyond the resolution of the pending lawsuit in the Franklin County Court of Common Pleas captioned (b)(6) *Dairy, L.L.C. v. Ohio Department of Agriculture*, Case No. 06-CVH-008473. The outcome of this lawsuit has broad implications upon the integrity of the public comment process and ultimately the legality of the permit. Plaintiffs' claim that maps designating the location of fields upon which liquid manure would be spread constitute trade secrets is spurious. It is obvious that field locations will become public knowledge once manure spreading activities commence. The motivation behind the lawsuit appears to be to delay disclosure during ODA's permitting process. We anticipate the lawsuit will result in a finding that the maps submitted with the applications are in fact public records and as such, ODA has a duty to disclose.

Should ODA proceed with the permitting process and issue (b)(6) Dairy, L.L.C. (or any other Plaintiff) a final permit before the field maps are disclosed, the integrity and legality of the public comment process will be undermined. If citizens are precluded from participating in a meaningful public comment process regarding all aspects of the application and the proposed CAFO operation, ODA cannot adequately evaluate the permit application because citizens would

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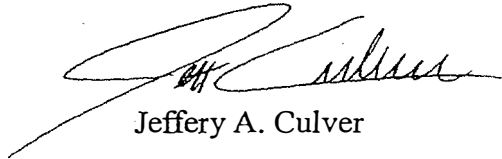
Kevin Elder, Executive Director
July 27, 2006
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be unable to provide informed comments regarding potential adverse affects. The citizens' cannot provide this information unless they know the locations where the manure will be applied.

It is the applicants who have chosen to file the lawsuit to prevent disclosure of parts of the application regarding manure management, and any resulting delay in the permitting process is of their own making. Therefore, on behalf of Wood County Citizens, we respectfully request that ODA extend the comment period for (b)(6) Dairy and any other applicant claiming trade secret protection of its field locations until such time as the case before the Franklin County Court of Common Pleas is resolved, the field maps are released, and citizens are afforded a reasonable opportunity to review the information contained in these maps and how they will be impacted.

Very truly yours,

EASTMAN & SMITH LTD.



Jeffery A. Culver

JAC/grh

[C]itizens would be limited to enforcing the mere requirement to develop a nutrient management plan, but would be without means to enforce the terms of the nutrient management plans because they lack access to those terms. This is unacceptable. *** [E]ven assuming ... the nutrient management plans did not themselves constitute effluent limitations, we would still hold that the CAFO Rule violates the [Clean Water] Act's public participation requirements. *** Given that the CAFO Rule forestalls - rather than "provides for, encourages, and assist[s]" - public participation in the development and enforcement of nutrient management plans, and given that nutrient management plans are an important "regulation, standard, effluent limitation, plan or program" established by the EPA to regulate land application discharges, the CAFO Rule violates the plain dictates of 33 U.S.C. § 1251(e).

The Second Circuit's reasoning is directly on point in addressing ODA's trade secret policy. Concealing the details of any MMP leaves the community without means to review terms of the Draft Permit. This forestalls public participation in violation of the the Clean Water Act and raises serious questions about whether ODA will be able to issue Clean Water Act permits that comply with the law in the future. Even if ODA believes it has the legal basis to ignore federal regulations at this time, federal standards will apply here, given that (b)(6) Dairy cannot begin operation until review and approval under Ohio EPA's NPDES permitting authority. ODA's dissonant approach to trade secrecy therefore offers nothing but disruptive potential. The agency should develop a federally acceptable policy at the outset.

III. Conclusion

In conclusion, the unavailability of field locations in (b)(6) Dairy's MMP during the public comment period denies citizens critical information contained in the Draft Permit. No matter how thorough an agency's technical review, there are many concerns about land application locations that may not be visible on ODA's radar screen. Neighbors to "secret" fields may have unique knowledge of the land area and be in a position to reveal otherwise unconsidered environmental risks. Neighbors with special health problems may need notification before exposure to animal waste. Certain field locations may unduly impact tourism and the local economy. Concerned citizens may want to do before-and-after comparisons of groundwater samples.² Without land application site maps, without knowledge of where the proposed facility plans to dispose of tens of millions of gallons of animal waste, a community is excluded from the one opportunity it has to be heard in the permit review process, to offer the benefit of local expertise, and to prepare for

² The Wood County prosecutor's office documented such concerns in its records request to ODA, stating "a baseline test on wells in the immediate vicinity of both the dairy and the manure application fields ... is necessary in order for the Health Department to ... perform its duty under O.R.C. § 3767.18." Letter from Linda F. Holmes to Jennifer Tiell (June 15, 2006) [Attachment J]. Furthermore, these concerns are substantiated by Ohio EPA's initial review and determination of (b)(6) Dairy's MMP that "a few of the planned land application fields may not be acceptable due to the location in the Village of Cygnet's source water protection area." Letter from Melinda Harris to (b)(6) (June 14, 2006) [Attachment J].

ASSISTANT PROSECUTING ATTORNEYS

Civil Division

Linda F. Holmes, Chief
Molly L. Mack

Criminal Division

Gwen Howe-Gebers, Chief
Paul Dobson, Chief
Walter Meneses
Aram Ohanian
Heather Baker

Juvenile Division

Timothy Atkins, Chief
Elizabeth Kennedy
William M. Connelly Jr.



Raymond C. Fischer
WOOD COUNTY
PROSECUTING ATTORNEY

June 15, 2006

Ms. Jennifer Tiell
Ohio Department of Agriculture
8995 East Main Street
Reynoldsburg, Ohio 43068

Re: (b)(6) and/or (b)(6) Dairy

Dear Jennifer:

On behalf of the Wood County Combined General Health District, we hereby make a public records request for any and all documentation submitted by (b)(6) and/or the (b)(6) Dairy to support their claim of "trade secret" status for the maps and other information identifying the fields that will be used for manure application in the operation of the dairy.

As discussed in an earlier conversation, the Health Department wants to do baseline testing of ditches and streams in close proximity to those fields. The Health Department has duties under O.R.C. §3707.01 to abate all nuisances within its jurisdiction and under O.R.C. §3767.18 to abate a nuisance caused by defiling a well or body of running water. Residents in the area have also requested that the Health Department do a baseline test on wells in the immediate vicinity of both the dairy and the manure application fields. This information is necessary in order for the Health Department to provide this service to area residents and perform its duty under O.R.C. §3767.18.

This request is being made pursuant to language in *State ex rel. Besser v. Ohio State University* (2000) 89 Ohio St.3d 396. The Ohio Supreme Court held that an entity claiming trade secret status bears the burden to identify and demonstrate that the material is included in the categories of protected information under the statute and additionally, must take some active steps to maintain its secrecy.

We also renew our request that you provide to the Wood County Combined General Health District the manure application maps and other documents relating to manure application that you are currently withholding as a "trade secret". Our office does not believe that it is exempt from the Public Records Law, O.R.C. §149.43 as a "trade secret". If the department continues to accept (b)(6) claim of claim secret status for this information,

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Appellate
Jacqueline M. Kirian

Investigator
John Helm

Youth Services & Program
Valerie Linkey, Director
Margaret Aubry-Kaufman
Christy Snyder

Victim Witness
Monica DeLeon, Coordinator
Robert McGeein

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Ohio Department of Agriculture
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our office in all likelihood will file a mandamus action seeking the release of those records as public records.

Thank you in advance for your assistance and cooperation.

Sincerely,



Linda F. Holmes
Assistant Prosecuting Attorney

LFH/lel
cc: Health Dept.

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COURIER'S VIEW

Right to know

ODA's first obligation is to the public

It's not particularly surprising that the owners and developers of a dairy megafarm in Wood County tried to conceal from the public where the manure from the operation would be spread. They were trying to avoid the harassment and other attempts to influence cooperating landowners that have occurred at other new megadairies.

What's stunning, though, is that the Ohio Department of Agriculture would facilitate the attempt to keep the plans secret. The ODA actually had said it would not release the manure map to the public because the new megafarm's owners claimed it would reveal "trade secrets." It was only after a public outcry that the ODA decided Wednesday to "revisit" its decision and release the information after all — following a 10-day waiting period, if nothing happens in the meantime to change their minds.

No doubt the neighbors of the new megadairy are pleased with their apparent victory. But we remain appalled that the ODA apparently thinks its job is to work for big ag interests. Its first reaction to the request for secrecy was, "We have to protect the dairy." What about the public?

People have a right to know when a business is moving into their neighborhood, particularly when that business carries the strong potential of changing their quality of life. Property values and health are at risk here. Manure spills and water pollution have followed within a few years of the opening of many other farms developed by (b)(6) Dairy Development. The smell from vast quantities of manure being injected into or sprayed on fields can make nearby homes unlivable.

(b)(6) recruits Dutch dairy farmers to come to this country and start megadairies. The farmers generally are hard-working, competent people who've run dairies for generations. But operating small, 100-cow dairies in the Netherlands is nothing like running dairies 6 to 20 times that size in this country. Even with the training that (b)(6) provides, spills happen. Twenty-three million gallons of manure a year of untreated animal waste is a hazard waiting to become an accident.

The ODA should provide the Wood County citizens all the information they need about the new megadairies. They deserve to know where the manure from new farms will be spread, even if there's not much they can do to protect themselves. Once a megafarm goes in, property values decline, making it next to impossible for many families to afford to sell their homes and leave.

One final point — We understand that the Dutch dairy farmers want to farm here so they can avoid the severe environmental restrictions of their homeland, and expand. But these dairies are not needed. The U.S. has been running an enormous surplus in dairy products for decades. The only way any dairy farmer can make money is through government price supports, funded by taxpayers. So the Dutch farmers are coming here to produce a commodity we already have in extreme oversupply, making it that much more difficult for a dwindling number of small U.S.-born dairy farmers to compete. They're taking advantage of our price supports. And they're risking the environment and rural neighborhoods to do so.

Unfortunately, our laws allow this travesty.